No. 76-1047

In the Supreme Court of the United States

OCTOBER TERM, 1976

GLOBAL INDUSTRIES, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The court of appeals rendered no opinion. The decision and order of the National Labor Relations Board, adopting the decision of the administrative law judge (Pet. App. A.3 to A.24), are reported at 220 NLRB 295.

JURISDICTION

The judgment of the court of appeals was entered on September 20, 1976 (Pet. App. A.1). On December 8, 1976, Mr. Justice Blackmun extended the time within which to file a petition for a writ of certiorari to January 31, 1977. The petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the findings of the National Labor Relations Board that the petitioner corporation and its subsidiaries were a single integrated enterprise, over which the Board had jurisdiction, have a rational basis in law and are supported by substantial evidence.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth at Pet. App. A.24 to A. 25.

STATEMENT

1. Petitioner, Global Industries, Inc., has its main offices in Atlanta, Georgia. It wholly owns several corporations, situated in various states, which operated adult movie theatres and adult book stores. Among these was American Theatre Corporation, chartered in Nebraska, and Union Industries, which wholly owns Downtown Books, Inc., also a Nebraska corporation. American Theatre owns and operates the Pussycat Theatre in Omaha, Nebraska, where it shows adult movies. Downtown Books sells adult books and magazines and various novelty items in the lobby of the Pussycat Theatre (Pet. App. A.5 to A.7).

The three corporations have a common corporate officer, Mel Friedman, the president of petitioner and of American Theatre, and secretary-treasurer of Downtown Books. Friedman is also the president of Union Industries (Pet. App. A.6 to A.7). American Theatre obtains its film from Global Leasing Company, whose corporate officers— G. Thevis, president, and Joan Thevis, secretary—are also officers of petitioner (Pet. App. A.7; JX 1, 3).[1] The corporate offices of all the business entities involved in this

[1]"JX" references are to the joint exhibits in the Board proceeding.

case are located in a building in Atlanta, Georgia, owned by petitioner (Pet. App. A. 7).

The wholly-owned subsidiaries of petitioner also use a common accounting service located in Atlanta. Richard Berry, manager of Pussycat Theatre and Downtown Books from January, 1971, to October, 1974, sent personnel forms and the employees' time sheets to the Atlanta accounting service, and the employees' pay checks—signed by Mel Friedman—were sent to Omaha from Atlanta. Bills for debts incurred by Berry for Pussycat Theatre or Downtown Books were also sent to Atlanta. Berry cleared decisions to make sizeable purchases on behalf of the Omaha operations with Julius Davenport, an official of petitioner whose office was in Atlanta (Pet. App. A.7). Berry discussed problems in the theatre and book store operations with Davenport, Friedman, and Robert Mitchum, secretary-treasurer of Union Industries, from time to time (Pet. App. A.7, A.9). Davenport gave Berry instructions to pay the Omaha employees reasonable wages which were in line with the going Omaha rates (Pet. App. A.7 to A.8).

Berry was hired by Robert Mitchum in December, 1970, to manage Pussycat Theatre and Downtown Books. At the time, Berry was manager of another wholly-owned subsidiary of petitioner, Johnny Rebb's Book Store in Atlanta (Pet. App. A. 6).[2]

2. Two union[3] officials—Earl Wise, president, and Floyd Gibson, business manager—contacted Berry in

[2]At the time of the hearing before the Board's Administrative Law Judge, Berry was a supervisor for Panama Books, Inc., in Jacksonville, Florida, another wholly-owned subsidiary of petitioner. Berry was hired for the Panama Books position by Ralph Mitchum, president of Downtown Books (Pet. App. A.6).

[3]International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local No. 343, AFL-CIO.

December, 1970, while the Pussycat Theatre building in Omaha was being remodeled, to negotiate a contract for the theatre projectionists when the theatre opened. Berry and the union officials met again in January, 1971, and agreed to an oral collective bargaining agreement that the Union would furnish projectionists for $4.50 per hour and would have visitation rights. This was the entire agreement; Berry rejected other terms and refused to put the agreement in written form. The theatre opened in February, 1971, with union projectionists (Pet. App. A.11, A. 16).

In October, 1972, Wise and Gibson met with Berry and requested higher wages and two weeks' paid vacation for the projectionists. Berry told them that he did not have the authority to approve their request, that he would have to contact the people in Atlanta, and that he would respond to the request at a later date. The union officials, in November, 1972, asked Berry if he had heard from Atlanta, and Berry responded that he could not agree to the Union's wage and vacation proposals. The Union continued to furnish projectionists to the theatre according to the terms established in January, 1971 (Pet. App. A.11 to A.12).

On March 4, 1974, Berry discharged Elei Florence and Edward Force, the two union projectionists who were then working at Pussycat Theatre. When Union President Wise asked Berry why he had discharged them, Berry replied that he no longer needed the Union at the theatre. Berry hired two replacements for Florence and Force at wages lower than those of union projectionists (Pet. App. A.12 to A.13).

3. The Board determined that for jurisdictional purposes petitioner, American Theatre and Downtown Books constituted a single employer engaged in a single, integrated enterprise. The Board further found that the employer violated Section 8(a)(5) and (1) of the National Labor

Relations Act by refusing to accord continued recognition to the Union and by unilaterally reducing projectionists' wages, and violated Section 8(a)(3) and (1) of the Act by discharging Florence and Force because of their affiliation with the Union. The Board ordered the employer to bargain in good faith with the Union, to revoke the unilateral changes in the wage rate, to offer Florence and Force reinstatement, and to reimburse them for any loss of pay suffered (220 NLRB 295; Pet. App. A.3 to A.24). The court of appeals enforced the Board's order without opinion (Pet. App. A.1 to A.2).

ARGUMENT

In *Radio and Television Broadcast Technicians, Local 1264* v. *Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256, this Court recognized that "in determining the relevant employer, the Board considers several nominally separate business entities to be a single employer where they comprise an integrated enterprise * * *. The controlling criteria, set out and elaborated in Board decisions, are interrelation of operations, common management, centralized control of labor relations and common ownership." See also *South Prairie Constr. Co.* v. *Operating Engineers*, 425 U.S. 800, 802-803.

The only question in this case is whether the Board properly asserted jurisdiction over and directed its remedial order at petitioner, together with American Theatre and Downtown Books, as part of a single integrated enterprise. The court below correctly found that the Board's determination that petitioner and its Omaha subsidiaries constituted a single employer for purposes of the Act was supported by substantial evidence and that "no error of law appears" (Pet. App. A.2). The evidence showed that petitioner and its wholly-owned but separately incorporated subsidiaries are closely bound together by common officerships, by an

interrelatedness of business operations, and by petitioner's exercise of operational control, including control of labor relations, over its subsidiaries. Further review of this essentially factual determination is not warranted. *South Prairie, supra,* 425 U.S. at 803-804. *Golden State Bottling Co.* v. *National Labor Relations Board,* 414 U.S. 168, 172-174.

There is no conflict between this case and *National Labor Relations Board* v. *Timken Silent Automatic Co.,* 114 F. 2d 449 (C.A. 2), upon which petitioner mistakenly relies. *Timken* did not involve the Board's policy of treating integrated enterprises as a single employer. Rather, the issue in *Timken* was whether the Board could direct a remedial order at Timken-Detroit Axle Co., as a successor employer to Timken Silent Automatic Co., the original respondent in the Board proceeding, simply because the former was the parent corporation of the latter. The Second Circuit, although holding that this was an insufficient basis for imposing liability on a parent corporation, has, in subsequent cases, recognized that such liability may be imposed where there is the degree of integration involved here. See *National Labor Relations Board* v. *A.K. Allen Co., Inc.,* 252 F. 2d 37 (C.A. 2); *National Labor Relations Board* v. *Spun-Jee Corp.,* 385 F. 2d 379, 380 (C.A. 2).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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